



Kibubuki v Director of Public Prosecutions & another (Miscellaneous Criminal Application E050 of 2025) [2025] KEHC 2487 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2487 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E050 OF 2025**

**DR KAVEDZA, J
MARCH 13, 2025**

BETWEEN

JOEL KIBUBUKI APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

DCIO, KILIMANI POLICE STATION 2ND RESPONDENT

RULING

1. The applicant filed the notice of motion 12th March 2025 seeking orders of anticipatory bail. The application is supported by an affidavit sworn by the applicant of similar date.
2. The applicant avers that on 26th February 2025, he was summoned to Kilimani Police Station at the request of Asumani Hassan Kibarabara, who sought assistance in investigations concerning a motor vehicle registered in his name but not updated in the National Transport and Safety Authority records. Upon arrival, the applicant was interrogated regarding a Mercedes Benz, registration number KAP 300C, registered under the name of Asumani Ali Kibarabara. A copy of the vehicle's registration document is annexed hereto.
3. During the interrogation, the applicant provided the 2nd Respondent with all information within his knowledge regarding any involvement in the vehicle's transfer, which was limited to offering advice on the transfer process based on personal experience. The registered owner of the motor vehicle was not present during the interrogation.
4. After receiving the information, the officers left the room to consult their superiors. Upon returning, they demanded a sum of Kenya Shillings Two Hundred Thousand (KShs. 200,000/-). The applicant was allowed to leave temporarily to source the funds, which he was unable to raise and is unwilling to provide as a matter of principle.



5. The applicant alleges that there is a scheme to arrest and detain him until he remits the demanded bribe, despite his full cooperation. The officers have since resorted to persistent calls demanding payment. In view of this, the applicant seeks an order barring his arrest to prevent any unlawful detention.
6. At this juncture, the duty of this court is not to interrogate whether the applicant's apprehensions are genuine but rather, to protect his constitutional rights and fundamental freedoms guaranteed to all persons.
7. Article 49(1) of the Constitution states that an arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling persons not to be released. While the right to anticipatory bail or bond pending arrest is not specifically provided for by statute, there is no lacuna in the Constitution.
8. Moreover, Article 22(1) of the Constitution states that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened. The said article does not discriminate against parties seeking orders of anticipatory bail.
9. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. The applicant asserts that he faces continued intimidation by law enforcement over his legal representation of the accused persons in court. He maintains that unless the reliefs sought are granted, his rights will be unjustly curtailed.
10. At this ex parte stage, I am only supposed to be satisfied, which I am, that unless the orders sought are granted, the applicant's right to liberty under Article 29 of the Constitution will be compromised.
11. Having considered the application, the supporting affidavit of the applicant, and the annexures thereto, I hereby order as follows:
 - i. The applicant herein is admitted to anticipatory bail in the sum of Kenya Shillings One Hundred Thousand (Kshs. 100,000) to be deposited in court.
 - ii. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicant for any criminal conduct. However, they shall not arrest or detain the Applicant in view of order (i) above or until further orders of the court.
 - iii. The applicant's advocates are further directed to escort the applicant to the offices of the 2nd respondent for questioning and/or interrogation within seven (7) days from the date hereof and not later than 22nd March 2025.
 - iv. Upon the conclusion of investigations, and if a decision to charge the applicant has been made, the respondents shall not arrest or detain the applicant but he shall be informed of the court where he is to appear for plea taking.
 - v. Order (iv) shall remain in force until plea has been taken and the trial court has set new bail/ bond terms in which case the orders of this court shall lapse.

RULING DATED AND DELIVERED VIRTUALLY ON THIS 13TH DAY OF MARCH 2025.

D. KAVEDZA

JUDGE

